

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
VALLEY DEVELOPMENT COMPANY,)
)
Appellant,)
)
vs.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)
_____)

PCHB No. 439

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged airborne particulant violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 11th day of April, 1974, at Seattle, Washington; and appellant Valley Development Company appearing through its attorney, James P. Curran, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney Keith D. McGoffin; and Board members present at the hearing being Walt Woodward and Mary Ellen McCaffree; and the Board having considered the sworn testimony, exhibits, post-

1 hearing briefs, records and files herein and having entered on the
2 11th day of April, 1974, its proposed Findings of Fact, Conclusions
3 and Order; and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail, return
5 receipt requested and twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions and Order, dated the 11th day of April,
11 1974, and incorporated by this reference herein and attached hereto
12 as Exhibit A, are adopted and hereby entered as the Board's Final
3 Findings of Fact, Conclusions and Order herein.

14 DONE at Lacey, Washington this 7th day of May, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 WALT WOODWARD, Chairman

18 
19 MARY ELLEN McCAFFREE, Member

20
21
22
23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF VALLEY)
DEVELOPMENT COMPANY,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 439

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged airborne particulant violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, at 9:30 a.m., January 10, 1974.

Appellant appeared through James P. Curran, respondent through Keith D. McGoffin. Eugene Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified, exhibits were admitted.

EXHIBIT A

1 Counsel submitted post-hearing briefs.

2 From testimony heard, exhibits examined, briefs considered and
3 transcript reviewed, the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Section 9.15 of respondent's Regulation I makes it unlawful to
7 cause or permit untreated open areas in a private roadway to be
8 maintained without taking "reasonable precautions" to prevent particulate
9 matter from becoming airborne.

10 II.

11 One hundred forty-fourth Avenue S.E. is a private road in the
12 Meridian Valley residential complex located in King County near Kent.
13 During the months of July and August 1973, the private thoroughfare
14 was an untreated dirt road for a distance of at least one-half mile.
15 Vehicular traffic on that untreated portion of the road caused dust
16 particulates to become airborne.

17 III.

18 Valley Development Company, participating in the partnership which
19 is the legal owner of the private roads in the Meridian Valley
20 development, was served by certified mail under date of July 12, 1973
21 with respondent's Notice of Violation Number 8397, citing Section 9.15
22 of the regulation and bearing on the face of the notice this handwritten
23 description of the violation:

24 "private road - not taking adequate precautions to
prevent particulate matter from becoming airborne."
5

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 IV.

2 Under date of July 28, 1973, E. G. Czarnecki, president of Valley
3 Development Company, Inc., responded to the violation in writing to
4 respondent. On July 18, 1973, Mr. Czarnecki conferred by telephone
5 with an inspector on respondent's staff and agreed with the inspector
6 that a "reasonable precaution" to prevent further dust particulate
7 emissions on that untreated portion of a private road would be for
8 the road to be blocked so that only residents and trades people serving
9 residents of that stretch of road could use the thoroughfare.

10 V.

11 On August 3, 1973, in response to the complaint of a resident of
12 144th S.E., an inspector found no blockades at either end of the road,
13 observed dust particulant emissions from the road when used by a
14 vehicle and issued to appellant Notice of Violation Number 8308, again
15 citing Section 9.15 and again bearing on the face of the notice this
16 handwritten description of the violation:

17 "private road - not taking adequate precautions to prevent
18 particulate matter from becoming airborne."

19 Subsequently and in connection therewith, appellant was served with
20 Notice of Civil Penalty Number 1084 in the amount of \$50.00 and
21 citing a violation of Section 9.15 of Regulation I, which is the subject
22 of this appeal.

23 VI.

24 Appellant contends, but did not prove, that work was being done
25 under contract leading to an eventual paving of the road. Two
26 witnesses testified to the contrary that on the dates of the two

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 notices of violation there was no work being done on the road and no
2 evidence of subsurface construction.

3 From these findings the Pollution Control Hearings Board comes
4 to these

5 CONCLUSIONS

6 I. .

7 Testimony makes it clear that appellant was in violation of
8 Section 9.15 of respondent's Regulation I on August 3, 1973 as
9 contended in Notice of Violation Number 8308. Some three weeks earlier,
10 appellant had been advised by another notice of violation of Section 9.15
11 of Regulation I and its president had discussed with respondent what
12 "reasonable precaution" could be taken to prevent further notices of
13 violation. On August 3, 1973 it was abundantly clear to an inspector
14 of respondent's staff that those precautions had not been taken.

15 II.

16 The \$50.00 civil penalty, being one-fifth of the maximum allowable
17 amount which could have been levied in this matter, is reasonable.

18 Therefore, the Pollution Control Hearings Board issues this

19 ORDER

20 The appeal is denied and the civil penalty of \$50.00 is sustained.
21 DONE at Lacey, Washington this 11th day of April, 1974.

22 POLLUTION CONTROL HEARINGS BOARD

23 Walt Woodward
24 WALT WOODWARD, Chairman

25 W. A. Gissberg
26 W. A. GISSBERG, Member

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

4 Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member